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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 715 13

KIM YOUNG,

vs.

Appellant,

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR
COURT OF THE STATE OF CALIFORNIA.

STATEMENT OPPOSING JURISDICTION AND
MOTION TO DISMISS OR AFFIRM.

RAY L. CHESEBRO,

FREDERICK VON SCHRADER,

W. JOS. MCFARLAND,

JOHN L. BLAND,

Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 715

KIM YOUNG,

vs.

Appellant,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

**STATEMENT OF MATTER AND GROUNDS MAKING
AGAINST THE JURISDICTION OF THE UNITED
STATES SUPREME COURT AND MOTION TO DIS-
MISS APPEAL OR AFFIRM JUDGMENT OF THE
STATE COURT.**

The appellee respectfully submits a statement of matter and grounds making against the jurisdiction of the United States Supreme Court as follows:

I.

There is no Substantial Federal Question Involved.

—It is the position of the appellee that the ordinance out of a violation of which this proceeding arose is a legitimate exercise of the reserved police power of the State, being an ordinance having for its object the prevention of littering of the streets of the city, and that because it does fall clearly within such police power it is not within the inhibitions of the 14th Amendment to the Federal Constitution.

We think our position in this regard is fully sustained by the decision of the Circuit Court of Appeals, Ninth Circuit, in the case of *San Francisco Shopping News Co. v.*

City of South San Francisco, decided in 1934, and reported as 69 F. (2d) 879. Certiorari was denied by this Honorable Court in case No. 377, October Term, 1934; 293 U. S. 606.

The Circuit Court of Appeals in that case sustained the validity of an ordinance of the City of South San Francisco which read in part as follows:

"SECTION 1. It shall be unlawful for any person, firm or corporation to distribute or cause to be distributed in the City of South San Francisco, any handbill, or any printed or written advertising matter by placing or causing the same to be placed in any automobile, or in any yards, or on any porch, or in any mail box in said City, not in possession or under the control of the person so distributing the same.

"SECTION 2. The provisions of this ordinance shall not be deemed to apply to any newspaper, or any publication printing news of a general nature and keeping advertising space therein open to the public, and the publishing of general advertising matter, therein."

The court said (page 890):

"As a matter of fact, however, the ordinance in question does not purport to prohibit the business of publishing or distributing a paper of the class to which the appellant's product belongs. The ordinance merely forbids the distribution of such publication by placing it into an automobile, yard, porch, or mail box 'not in possession or under the control of the person so distributing the same.' The ordinance does not forbid the manual delivery of the publication by the carrier to a member of the household; nor, as the appellees point out, are the United States mails closed to 'Shopping News.' The enactment does not prohibit the conduct of the business in question; it merely seeks to regulate the manner in which the product shall be distributed."

and the court further said (page 891):

"If the appellant's publication belongs to a class of papers which, when delivered according to the method forbidden by the ordinance, can reasonably be said to

increase the city's fire hazard, even though the appellant's *particular* publication is delivered according to the forbidden method with such a superabundance of caution that no fire hazard could conceivably result, nevertheless the ordinance is not unconstitutional, and the appellant's publication is subject to its provisions."

The appellee is of the opinion that the case of *Lovell v. City of Griffin*, 303 U. S. 444 (82 L. Ed. 949) is not in conflict with the decision in the case last cited, and does not set forth the law applicable to the ordinance of the City of Los Angeles involved in the present proceeding for the reason that the ordinance here involved is strictly a police power measure enacted for the purpose of preventing the littering of the city streets while the ordinance involved in the case of *Lovell v. Griffin* was in fact a method of censorship, having but little, if any tendency to prevent littering of streets, as it is perfectly plain that papers distributed by permission of city authorities could litter the streets in the same way that similar papers distributed without permission could do.

By reason of the above we respectfully move the Honorable Court to dismiss the appeal in the above entitled matter and affirm the judgment of the court below.

RAY L. CHESEBRO,

City Attorney,

FREDERICK VON SCHRADER,

Assistant City Attorney,

W. JOS. MCFARLAND,

Assistant City Attorney,

JOHN L. BLAND,

Deputy City Attorney,

By FREDERICK VON SCHRADER,

Assistant City Attorney,

*Attorneys for Appellee, the People
of the State of California.*